

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
MARCEL THOMAS, Individually,)	
d/b/a Refund Recovery Group,)	
)	
Defendant.)	

**COMPLAINT FOR PERMANENT INJUNCTION,
RECOVERY OF ERRONEOUS REFUNDS, AND OTHER RELIEF**

The plaintiff, the United States of America, alleges against defendant Marcel “Marcellus” Thomas (Thomas) as follows:

1. This is a civil action brought by the United States under Sections 7401, 7402(a), 7405, 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) (“IRC”) to enjoin defendant Marcel Thomas, and anyone in active concert or participation with him, from:

- a. acting as a federal tax return preparer or requesting, assisting in, or directing the preparation or filing of federal tax returns for any person or entity other than himself, or appearing as a representative on behalf of any person or organization whose tax liabilities are under examination or investigation by the Internal Revenue Service;
- b. preparing or filing, or assisting in the preparation or filing of tax returns for others that defendant knows will result in the understatement of any tax liability;
- c. understating customers’ tax liabilities as subject to penalty under IRC § 6694;
- d. instructing or advising taxpayers to understate their federal tax liabilities;
- e. engaging in any other activity subject to penalty under IRC § 6694;
- f. engaging in any activity subject to penalty under IRC § 6695;

- g. engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws, and
- h. to recover erroneous refunds of taxes paid to Thomas.

Jurisdiction

2. This action is requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States, pursuant to the provisions of IRC §§ 7401 and 7407.

3. Jurisdiction is conferred on this Court by Sections 1340 and 1345 of Title 28, United States Code, and IRC §§ 7402(a) and 7407.

4. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because the defendant resides or conducts business within this judicial district, and a substantial part of the actions giving rise to this suit took place and are taking place in this district.

Defendants

5. Defendant Marcel Thomas resides in High Point, North Carolina, within this judicial district, and does business as “Refund Recovery Group.” Thomas and Refund Recovery Group (RRG) have been preparing and filing federal income tax returns for over 20 years.

Defendant’s Activities

6. Thomas is a commercial tax return preparer who has prepared at least 199 federal income tax returns for others since 2004. He claims that he is an ordained minister.

7. Thomas takes many unlawful steps to conceal the fact he is a paid tax return preparer. Although tax preparers are required by law to sign returns they prepare for customers, Thomas

fails to sign many of the returns he prepares for customers. Although required by law to do so, Thomas also fails to provide his taxpayer identification number on returns he prepares and files.

8. Without his customers' permission, Thomas frequently directs the IRS to deposit his customers' refunds directly into his (or his wife's) personal and business bank accounts. After the IRS deposits his customers' refunds into his bank accounts, Thomas gives a portion of the refunds to his customers and then keeps the balance as his "consulting fee," often as much as \$500 to \$750 per return. Thomas does not negotiate his fee arrangements with his customers before filing their returns.

9. To enlarge his customers' tax refunds and increase his own profit, Thomas fabricates and grossly exaggerates his customers' tax deductions, including phony Schedule C business deductions, even though his customers do not request that he claim such false deductions, and provide information showing that they are entitled only to deductions in smaller amounts.

10. On information and belief, Thomas also invents phony self-employment businesses, inflates income, and creates fraudulent business deductions and losses for his customers to enlarge their tax refunds and increase his own cut.

11. To enlarge his customers' Earned Income Tax Credits (EITC), Thomas uses false information to prepare and file his customers' tax returns, including sham self-employment businesses, inflated income amounts, and fabricated and exaggerated Schedules C deductions.

12. By preparing and filing returns based on false EITC-related information, as described above, Thomas violates the EITC due diligence requirements under the Internal Revenue Code and Treasury Regulations.

13. The understatements of tax liability on returns Thomas prepares have caused the erroneous issuance of tax refunds. Without the knowledge or consent of his customers, Thomas directs the IRS to deposit these refunds into his personal and business bank accounts. Thus far, the IRS has discovered 199 erroneous tax refunds totaling \$625,142 deposited into Thomas's personal and business bank accounts.

14. Thomas repeatedly negotiates his customers' tax refunds without their knowledge or consent by directing the IRS to deposit his customers' refunds into his personal and business bank accounts.

15. Although required to do so by law, Thomas repeatedly fails to provide his customers with copies of their tax returns.

16. Although required to do so by law, Thomas repeatedly fails to provide his taxpayer identification number on returns he prepares and files.

17. Although required to do so by law, Thomas repeatedly fails to sign federal income tax returns he prepares and files for his customers.

18. Thomas repeatedly guarantees tax refunds for his customers, conduct that is subject to injunction under the Internal Revenue Code.

19. Thomas knows his conduct, as described above is illegal. He has worked in the federal income tax return preparation business for over 20 years.

Harm to the Public

20. Thomas's customers have been harmed because they have paid him fees to prepare tax returns that understate their correct federal income tax liabilities, thereby subjecting them to interest and possible penalties.

21. The United States is harmed because Thomas's customers are not reporting and paying their correct tax liabilities. The estimated tax loss resulting from the tax returns prepared by Thomas that generated refunds which were deposited into his bank accounts exceeds \$500,000.

22. The United States is further harmed because the IRS must devote its limited resources to identifying and recovering those lost tax revenues from Thomas's customers. Moreover, given the IRS's limited resources, identifying and recovering all revenues lost from Thomas's preparation of false and fraudulent returns may be impossible.

23. Thomas's activities undermine public confidence in the fairness of the federal tax system and encourage noncompliance with the internal revenue laws.

Count I

Injunction Under IRC § 7407

24. The United States incorporates by reference the allegations in paragraphs 1 through 23.

25. Section 7407 of the Internal Revenue Code authorizes a district court to enjoin an income tax preparer from:

- a. engaging in conduct subject to penalty under IRC § 6694;
- b. engaging in conduct subject to penalty under IRC § 6695;
- c. misrepresenting his experience or education as a tax return preparer;
- d. guaranteeing a tax refund or allowance of a tax credit; or
- e. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that the preparer has engaged in such conduct and injunctive relief is appropriate to prevent recurrence of the conduct. Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the internal revenue laws, the court may enjoin the person from acting as a federal income tax return preparer.

26. Thomas has continually and repeatedly prepared Form 1040 federal income tax returns and Schedules C that claimed false or fraudulent businesses, phony business deductions, and inflated income amounts. In doing so, Thomas understated his customers' federal tax liabilities and asserted positions that he knew or reasonably should have known were unrealistic and frivolous under IRC § 6694.

27. Thomas has continually and repeatedly guaranteed the issuance of tax refunds for his customers, conduct that is subject to injunction under § 7407(b)(1)(C).

28. Thomas also engaged in fraudulent or deceptive conduct by:

- a. filing federal income tax returns without signing as paid preparer;
- b. electronically filing his customers' tax returns as if the returns were actually prepared and filed by the customers;
- c. guaranteeing tax refunds for his customers, and
- d. placing his bank account numbers on his customers' tax returns to cause the IRS to deposit his customers' refunds into his personal and business bank accounts.

29. Thomas has continually and repeatedly failed to furnish to his customers copies of returns he prepared and is thereby subject to penalty under § 6695(a).

30. Thomas has continually and repeatedly failed to sign returns he prepared and is thereby subject to penalty under § 6695(b).

31. Thomas has continually and repeatedly failed to furnish his taxpayer identification number on returns he prepared and is thereby subject to penalty under § 6695(c).

32. Thomas has continually and repeatedly directed the IRS to deposit his customers' refunds into his and his wife's personal and business bank accounts, thereby endorsing or otherwise negotiating a check issued to a taxpayer, which is subject to penalty under § 6695(f).

33. Thomas willfully and fraudulently manipulated and falsified information on returns he prepares to maximize his customers' EITC, thereby failing to be diligent in determining his customers' eligibility for the Earned Income Credit, which is subject to penalty under § 6695(g).

34. Thomas's actions, as detailed above, fall within IRC §§ 7407(b)(1)(A), (C), and (D), and thus are subject to being enjoined under IRC § 7407.

35. Because of his repeated and continual misconduct subject to injunction under IRC § 7407, Thomas should be enjoined from acting as a federal income tax preparer.

Count II

Injunction Under IRC § 7408

36. Section 7408 of the Internal Revenue Code authorizes courts to enjoin specific conduct subject to penalty under §§ 6700 and 6701. Section 6701(a), in part, penalizes individuals who prepare, procure, or assist in the preparation of tax returns they know will result in an understatement of another person's tax liability if filed with the IRS.

37. Thomas, through his actions detailed above, has prepared, procured, and/or assisted in the preparation of tax returns that he knew would result in the understatement of customers' tax liability. Thomas knowingly and willfully prepared federal income tax returns based on false information to understate his customers' tax liability and generate fraudulent tax refunds.

38. Thomas engaged in conduct subject to penalty under IRC § 6701 and therefore should be enjoined under § 7408.

Count III

Injunction Under IRC § 7402(a) for Unlawful Interference with the Enforcement of the Internal Revenue Laws

39. The United States incorporates by reference the allegations in paragraphs 1 through 38.

40. Section 7402 of the Internal Revenue Code authorizes a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

41. Thomas, through his actions detailed above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

42. The federal income tax returns Thomas prepared for his customers improperly and illegally reduced their federal income, self-employment, and social security tax liabilities.

43. If Thomas is not enjoined from engaging in this fraudulent and deceptive conduct, such as preparing false or fraudulent tax returns, the United States will suffer irreparable injury because the revenue losses caused by Thomas will continue to increase.

44. While the United States will suffer irreparable injury if Thomas is not enjoined, Thomas will not be harmed by being compelled to obey the law.

45. The public interest will be advanced if the Court enjoins Thomas because an injunction will stop his illegal conduct and the harm the conduct is causing to the United States.

46. If Thomas is not enjoined, he is likely to continue to interfere with the enforcement of the internal revenue laws.

Count IV

Recovery of Refunds Erroneously Received by Defendant Thomas

47. The United States incorporates by reference the allegations of paragraphs 1 through 46.

48. Section 7405(b) of the IRC authorizes the United States to seek recovery of taxes erroneously refunded. Section 7405(c) permits a court to enter judgment for interest which has accrued and continues to accrue on the refunded amounts. Moreover, Section 6532(b) permits the Government to recover erroneous refunds up to five years from the making of the refund if it appears any part of the refund was induced by fraud or misrepresentation of material fact.

49. Defendant Thomas filed fraudulent income tax returns that caused the IRS to issue erroneous refunds. Thomas induced the IRS to issue the refunds by fraud or misrepresentation of material facts. Thomas prepared and filed income tax returns that included phony businesses, false and inflated deductions, and falsified income amounts. This false information caused the returns to understate tax liability and, thus, caused the issuance of erroneous tax refunds. Thomas knew his statements were fraudulent or misrepresentations of material fact because he did not interview many customers or request documentation from them before preparing their returns, or he submitted information entirely different from the information his customers

provided. Thus, Thomas submitted fabricated and exaggerated information on his customers' returns to maximize their EITC and obtain enlarged tax refunds.

50. In response to these income tax returns the IRS, within the past five years, has issued at least 199 refunds that exceed \$620,000.

51. Thomas induced the IRS to deposit the refunds into his personal and business bank accounts by fraud and misrepresentations of material fact. The IRS erroneously issued refunds based on these fraudulent returns. These refunds were intercepted by Thomas, who filed the returns as if the customer had prepared the return (not signing as paid preparer) and wrote his own bank account information on his customers' tax returns, causing the IRS to deposit the refunds into his personal and business bank accounts.

52. Thomas caused the refunds and is not entitled to any abatement of interest due to the erroneous refunds.

53. Thomas was not the intended recipient of the refunds and has failed to repay the monies erroneously refunded.

54. On account of the foregoing, Thomas is indebted to the United States for the full amount of all erroneous refunds he caused the IRS to issue.

WHEREFORE, the plaintiff, the United States of America, prays as follows:

A. That the Court find that Thomas continually and repeatedly engaged in conduct subject to penalty under IRC § 6694 and § 6695, and that injunctive relief under IRC §7407 is therefore necessary and appropriate to prevent the recurrence of that conduct;

B. That the Court, pursuant to IRC § 7407, enter a permanent injunction prohibiting Thomas from acting as a federal income tax return preparer;

C. That the Court find that Thomas engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is therefore appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and IRC § 7402(a);

D. That the Court, pursuant to IRC § 7402(a), enter a permanent injunction prohibiting Thomas from:

- (1) preparing or filing, or assisting in or directing the preparation or filing, of federal tax returns for any person or entity other than himself, or appearing as a representative on behalf of any person or organization whose tax liability is under examination or investigation by the Internal Revenue Service;
- (2) preparing or assisting in the preparation of tax returns that defendant knows will result in the understatement of any tax liability;
- (3) understating customers' liabilities as prohibited by IRC § 6694;
- (4) engaging in any other activity subject to penalty under IRC § 6694;
- (5) engaging in any activities subject to penalty under IRC § 6695; and
- (6) engaging in other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

E. That the Court find that Thomas engaged in conduct subject to penalty under § 6701, and that injunctive relief under IRC § 7408 is therefore necessary and appropriate to prevent the recurrence of such conduct;

F. That the Court, pursuant to IRC §§ 7402(a) and 7407, enter an injunction requiring Thomas to contact by mail all persons for whom he prepared a federal tax return since January 1, 2003, and inform them of the Court's findings concerning the falsity or fraudulent attributes of those tax returns and enclose a copy of the permanent injunction against Thomas;

G. That the Court, pursuant to IRC §§ 7402(a) and 7407, enter an injunction requiring Thomas to produce to counsel for the United States, within eleven days of the entry of an injunction against him, a list that identifies by name, social security number, address, email, telephone number, and tax period(s) all persons for whom Thomas prepared federal tax returns or claimed a tax refund since January 1, 2004;

H. That the Court order, adjudge, and decree that Thomas is indebted to the United States for the erroneous refund of federal income taxes, and that the Court enter judgment against Thomas for the total amount of these erroneous refunds less any amounts already recaptured by the federal government, plus interest allowable by law;

I. That the Court retain jurisdiction over the defendant, Marcel Thomas, individually and doing business as Refund Recovery Group, and this action for the purpose of enforcing any permanent injunction entered against defendant;

J. That the United States be entitled to conduct all discovery permitted under the Federal Rules of Civil Procedure for the purpose of monitoring defendant's compliance with the terms of any permanent injunction entered against him; and

K. That this Court grant the United States such other and further relief, including costs,
as is just and equitable.

Dated this 11th day of April, 2007.

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